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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No
09/097,243

Applicant(s)

Manne

Examiner

Rodney Fuller

Art Unit

2851



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 7, 2001
- 2a) This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirements.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

- a) All b) Some* c) None of

1 Certified copies of the priority documents have been received.

2 Certified copies of the priority documents have been received in Application No. _____

3 Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

Attachment(s)

Art Unit 2851

DETAILED ACTION

Remarks

In response to applicant's request for a Continued Prosecution Application (CPA), dated March 7, 2001, the examiner has entered the amendment previously filed on January 26, 2001.

In the amendment, the applicant amended the independent claims 1 and 11 to include the limitation wherein "...said scent generator housed in a case which is adapted to be worn by said user thereby making said system portable." Furthermore, the applicant makes the argument (page 4, 2nd paragraph of Amendment) that "...this portability aspect of the present invention clearly distinguishes it from the reference relied on in the Office Action." The examiner maintains that Martin (US 5,610,674) does disclose wherein the scent generator is housed in a case. (See Figure 2, ref.# 64). However, the examiner acknowledges that Martin (US 5,610,674) does not disclose that the scent generator's case is "...adapted to be worn by said user thereby making the system portable." Thus, the examiner withdraws the 35 U.S.C. 102(b) rejection of claims 1-14 as being anticipated by Martin (US 5,610,674). However, the examiner maintains that the added limitation of portability would be obvious in light of Martin (US 5,610,674). (See 35 U.S.C. 103(a) section below)

Art Unit 2851

Claim Rejections - 35 USC § 103

1 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action.

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (US 5,610,674)

Martin (US 5,610,674) discloses all the structure set forth in the claims (see Office Action mailed December 8, 2000), except for the newly added limitation of claims 1 and 11, wherein "...said scent generator housed in a case which is adapted to be worn by said user thereby making said system portable." However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the limitation wherein "...said scent generator housed in a case which is adapted to be worn by said user thereby making said system portable," since it has been held that making an old device portable or movable without producing any new and unexpected result involves only routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA 1952)

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Conclusion

3 The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Knight (US 5,522,253), Blasdell, et al. (US 45,419,317); Huang (US 5,243,972); and Cotner, et al. (US 6,019,101) each disclose a "portable scent delivery system." Note: These references were made of record in a previous Office Action.

4 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney Fuller whose telephone number is (703) 306-5641. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Russ Adams, can be reached on (703)308-2847.


RUSSELL ADAMS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

REF

April 25, 2001